Under the Tunney Act, I wish to comment on the proposed Microsoft
settlement.
I agree with the problems identified in Dan Kegel's analysis
(on the Web at http://www.kegel.com/remedy/remedy2.html),
namely:

*The PFJ doesn't take into account Windows-compatible competing operating
systems
http://www.kegel.com/remedy/remedy2.html#abe
Microsoft increases the Applications Barrier to Entry
by using restrictive license terms and intentional incompatibilities.
Yet the PFJ fails to prohibit this, and
even contributes to this part of the Applications Barrier to Entry.

*The PFJ Contains Misleading and Overly Narrow Definitions and Provisions
http://www.kegel.com/remedy/remedy2.html#def.a
The PFJ supposedly makes Microsoft publish its secret APIs, but
it defines "API" so narrowly that many important APIs are not covered.

http://www.kegel.com/remedy/remedy2.html#def.j
The PFJ supposedly allows users to replace Microsoft Middleware with
competing middleware, but it defines "Microsoft Middleware"
so narrowly that the next version of Windows might not be covered at all.

http://www.kegel.com/remedy/remedy2.html#def.k
The PFJ allows users to replace Microsoft Java with a competitor's
product --
but Microsoft is replacing Java with .NET. The PFJ should therefore
allow users to replace Microsoft.NET with competing middleware.

http://www.kegel.com/remedy/remedy2.html#def.u
The PFJ supposedly applies to "Windows", but it defines that term so
narrowly that it doesn't cover
Windows XP Tablet PC Edition, Windows CE, Pocket PC, or the X-Box --
operating systems that all use the Win32 API and are advertized
as being "Windows Powered".

http://www.kegel.com/remedy/remedy2.html#info.requirements

The PFJ fails to require advance notice of technical requirements,
allowing Microsoft to bypass all competing middleware simply
by changing the requirements shortly before the deadline, and
not informing ISVs.

http://www.kegel.com/remedy/remedy2.html#info.timing
The PFJ requires Microsoft to release API documentation to ISVs
so they can create compatible middleware -- but only after the
deadline for the ISVs to demonstrate that their middleware is compatible.

http://www.kegel.com/remedy/remedy2.html#info.use
The PFJ requires Microsoft to release API documentation --
but prohibits competitors from using this documentation to
help make their operating systems compatible with Windows.

http://www.kegel.com/remedy/remedy2.html#info.formats
The PFJ does not require Microsoft to release documentation about
the format of Microsoft Office documents.

http://www.kegel.com/remedy/remedy2.html#info.patents
The PFJ does not require Microsoft to list which software patents
protect the Windows APIs. This leaves Windows-compatible operating systems
in an uncertain state: are they, or are they not infringing on Microsoft
software patents?
This can scare away potential users.

*The PFJ Fails to Prohibit Anticompetitive License Terms currently used by
Microsoft

http://www.kegel.com/remedy/remedy2.html#isv.oss
Microsoft currently uses restrictive licensing terms to keep
Open Source apps from running on Windows.

http://www.kegel.com/remedy/remedy2.html#isv.atl
Microsoft currently uses restrictive licensing terms to keep
Windows apps from running on competing operating systems.

http://www.kegel.com/remedy/remedy2.html#enterprise
Microsoft's enterprise license agreements (used by large companies,
state governments, and universities) charge by the number of computers
which could run a Microsoft operating system -- even for
computers running competing operating systems such as Linux!

(Similar licenses to OEMs were once banned by the 1994 consent decree.)

*The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used
by Microsoft

http://www.kegel.com/remedy/remedy2.html#caldera
Microsoft has in the past inserted intentional incompatibilities in
its applications to keep them from running on competing operating systems.

*The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

http://www.kegel.com/remedy/remedy2.html#oem
The PFJ allows Microsoft to retaliate against any OEM that ships Personal
Computers containing a competing Operating System but no Microsoft
operating system.

http://www.kegel.com/remedy/remedy2.html#oem
The PFJ allows Microsoft to discriminate against small OEMs
-- including regional 'white box' OEMs which are historically the most
willing to install competing operating systems -- who ship competing
software.

http://www.kegel.com/remedy/remedy2.html#oem.mda
The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs
based on criteria like sales of Microsoft Office or Pocket PC systems.
This allows Microsoft to leverage its monopoly on Intel-compatible operating
systems to increase its market share in other areas.

http://www.kegel.com/remedy/remedy2.html#enforcement
The PFJ as currently written appears to lack an effective enforcement
mechanism.

I also agree with the conclusion reached by that document, namely that
the Proposed Final Judgment as written
allows and encourages significant anticompetitive practices to
continue, would delay the emergence of competing Windows-compatible
operating systems, and is therefore not in the public interest.
It should not be adopted without substantial revision to address these
problems.

Sincerely,

Frank Iacovino